THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.9251 of 2002

Date:18.07.2007

Between:

Veeramallu Narasimha Rao

.. PETITIONER

AND

The Commissioner of Prohibition & Excise and others.

..RESPONDENTS

ORDER:

The petitioner is the owner of a scooter bearing No. AP-37-P-1348. On 25.05.2000, it was intercepted at 12.30 p.m. by the Station House Officer, Prohibition and Excise, Akiveedu. It is stated that 44 nips of I.M.L. were found in the vehicle. Therefore, it was seized and Crime No.37 of 2001 was registered under Section 34 of the A.P. Excise Act, 1968. Proceedings were initiated for confiscation of the vehicle. However, interim custody of the vehicle was given to the petitioner on his furnishing a bank guarantee for a sum of Rs.17,000/-, through orders, dated 06.09.2000. The Deputy Commissioner of Prohibition and Excise, the second respondent herein, directed confiscation of the vehicle. The petitioner preferred an appeal before the first respondent. The appeal was rejected vide orders, dated 12.04.2002. Hence, this writ petition.

The learned counsel for the petitioner submits that the seizure itself was under doubtful circumstances and the petitioner was prevented from submitting the explanation on account of the

paralytic stroke suffered by his father. He submits that no person was examined in the proceedings before the second respondent and the order of confiscation cannot be sustained in law.

The learned Government Pleader for Prohibition and Excise, on the other hand, submits that the petitioner failed to submit his explanation and the second respondent was left with no alternative, except to confiscate the vehicle.

The vehicle was seized on 25.05.2000 by the third respondent, on finding that certain quantity of I.M.L. was being transported through it. Thereafter, proceedings were initiated proposing to confiscate the vehicle. It is no doubt true that the second respondent served a show cause notice on the petitioner on 27.07.2000 and the petitioner did not submit his explanation. Even assuming that there was no excuse for the petitioner in not submitting the explanation, the second respondent was under obligation to examine the matter with reference to the record and to record evidence of the panchas. This procedure was not followed. The appellate authority also did not focus its attention on these aspects.

In the ordinary circumstances, the matter deserves to be remanded. However, at this length of time, no useful purpose would be served. The scooter itself may have become virtually a junk. The petitioner already deposited a sum of Rs.17,000/- for obtaining the interim custody. This Court is of the view that ends of justice would be met, if the confiscation is restricted to a sum of Rs.5,000/-.

Hence, the writ petition is partly allowed, directing the order of confiscation, dated 31.08.2001, to the extent of Rs.5,000/-

(Rupees five thousand only). The petitioner shall be refunded the balance amount, within two months from the date of receipt of a copy of this order. There shall be no order as to costs.

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18.07.2007

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